

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**MICHAEL D. ROSE, and EDWARD L.
HARMON, on their own behalf and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**CIVIL ACTION NO.: 5:22-cv-00405
HONORABLE FRANK W. VOLK**

**BETSY JIVIDEN, individually and in her
official capacity as the Commissioner of
the West Virginia Division of Corrections
and Rehabilitaiton, et al.**

Defendants.

**DEFENDANT GREENBRIER COUNTY COMMISSION'S RESPONSE TO
PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT
AND JOINDER IN RESPONSE OF DEFENDANTS BETSEY JIVIDEN'S, BRAD
DOUGLAS', AND JEFF SANDY'S RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO AMEND THE COMPLAINT**

NOW COMES Defendant Greenbrier County Commission, by counsel, Wendy E. Greve, Benjamin B. Vanston and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, and in response and in opposition to Plaintiffs' Motion for Leave to Amend Complaint (ECF No. 30) states as follows:

In response to Plaintiff's Motion to Amend their Complaint, Defendant hereby joins in and adopts as if fully restated herein, the Response of Defendants Betsy Jividen, Brad Douglas, and Jeff Sandy's Response in Opposition to Plaintiffs' Motion for Leave to Amend the Complaint. ECF No. 32. While Plaintiffs have moved this Court to file an Amended Complaint, a second Amended Complaint, no such proposed Amended Complaint has in fact been provided to Counsel for approval, or even to this Court in conjunction with their Motion for Leave. As Plaintiffs have failed to provide the proposed Amended Complaint the Defendant cannot determine whether or not the proposed

Amendment comports with Rule 15(a)(2) of the Federal Rules of Civil Procedure and specifically whether or not the proposed amendment would be futile or prejudicial.

WHEREFORE, for all the above stated reasons and as set forth in the Response of Defendants Betsy Jividen's, Brad Douglas', and Jeff Sandy's Response in Opposition to Plaintiffs' Motion for Leave to Amend the Complaint, Defendant Greenbrier County Commission respectfully requests that this Court **DENY** Plaintiffs' Motion for Leave to Amend Complaint and grant it any and all other such relief the Court deems proper and just.

Greenbrier County Commission
By Counsel,

/s/ Wendy E. Greve

Wendy E. Greve, WV State Bar No. 6599
Benjamin B. Vanston, WV State Bar No. 14146

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendant, Greenbrier County Commission, does hereby certify on this 28th day of November 2022, that a true copy of the foregoing ***DEFENDANT GREENBRIER COUNTY COMMISSION'S RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT AND JOINDER IN RESPONSE OF DEFENDANTS BETSEY JIVIDEN'S, BRAD DOUGLAS', AND JEFF SANDY'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT*** was served upon opposing counsel through the Court's CM/ECF filing System as follows:

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